

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Improving Public Safety Communications	)	WT Docket No. 02-55
In the 800 MHz Band	)	
	)	
Illinois Public Safety Agency Network Request	)	
For Supplemental Waiver of July 31, 2012	)	
Deadline for Completion of Rebanding	)	

To: Public Safety and Homeland Security Bureau

**RESPONSE TO REPLY TO OPPOSITION**

Nextel Communications, Inc. (“Nextel”), a wholly owned subsidiary of Sprint Nextel Corporation, hereby responds to the Reply to Opposition submitted by the Illinois Public Safety Agency Network (“IPSAN”) on March 22, 2013 (“Reply”). That Reply concerns the merits of IPSAN’s Request for Supplemental Waiver of July 31, 2012 Deadline for Completion of Rebanding submitted by on March 8, 2013 (“Request”).

**I. ARGUMENT**

IPSAN’s Reply sets forth essentially three arguments: (1) IPSAN’s reconfiguration is proceeding as quickly as possible given the challenges inherent in IPSAN’s reconfiguration, which warrants a further extension of more than six months; (2) IPSAN’s reconfiguration is proceeding as quickly as possible given the limited resources of IPSAN and its vendor, which warrants a further extension of more than six months; and (3) IPSAN’s pace of reconfiguration is not “blocking” any other reconfiguration, so there is no harm in granting IPSAN’s Request. None of these three arguments withstand scrutiny.

**A. The Alleged Complexities of IPSAN's Reconfiguration Do Not Warrant a Further Extension.**

According to IPSAN, its delay in completing its reconfiguration by the Bureau's deadline, subsequently extended, is the "product of an extremely difficult, logistical nightmare."<sup>1</sup> IPSAN specifically cites the "difficulty in getting technicians and radios together in the field,"<sup>2</sup> as though this was a challenge unique to IPSAN's reconfiguration. In an effort to justify this delay, IPSAN also cites a single reconfiguration project, the City of Chicago's Phase II reconfiguration, "as a basis of comparison" that purports to warrant grant of IPSAN's Request.<sup>3</sup> There are three significant problems with IPSAN's position.

First, IPSAN makes no effort to explain how the "logistical nightmare" of its reconfiguration could plausibly have been unexpected. This is particularly so given that Nextel provided IPSAN with \$562,414 in planning funding expressly for the purpose of planning IPSAN's reconfiguration and developing a statement of work, including a schedule that would allow for the timely and efficient reconfiguration of IPSAN's system. The purported challenge of IPSAN's reconfiguration should not have come as a surprise to IPSAN or its vendors.

Second, even setting aside the fact that Nextel provided IPSAN with significant funding to develop a plan for reconfiguration that would actually result in reconfiguration on a timely basis, IPSAN itself certainly should have been aware of the unique challenges it claims to have encountered when it submitted its *first* waiver request, well after reconfiguration had

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<sup>1</sup> Reply at 1-2.

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.*

commenced. In that original waiver request, however, IPSAN requested an extension of time until June 1, 2013 to complete rebanding.<sup>4</sup> At this point, the Bureau should at the very least inquire whether IPSAN's latest estimated deadline has any chance of holding.

Third, Chicago's reconfiguration project, cited by IPSAN as a basis of comparison by which the Bureau should evaluate IPSAN's progress, offers no justification for the slow pace of IPSAN's reconfiguration. IPSAN asserts that Chicago took 25 months to complete the first touch of a similar number of subscriber units.<sup>5</sup> In fact, Chicago completed its first touch in approximately eight months, reflecting a rate of roughly 20 subscriber units per day – or more than double IPSAN's rate of approximately eight subscriber units per day.

In short, any "logistical nightmare" associated with IPSAN's reconfiguration due to "difficulty in getting technicians and radios together in the field" should have been accounted for in the statement of work developed by IPSAN's vendor, particularly given that Nextel provided IPSAN with over half a million dollars to develop a plan for reconfiguring IPSAN's system. Further, IPSAN should have been well aware of the logistical challenges it faced when it requested its last extension – yet IPSAN now asks the Bureau to extend the deadline for completing IPSAN's reconfiguration by a full *five months* above and beyond IPSAN's original request. Finally, the single comparison IPSAN submits does not actually support a further waiver based on the pace of IPSAN's own lackluster reconfiguration efforts.

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<sup>4</sup> Illinois Public Safety Agency Network, Request for Waiver of July 31, 2012 Deadline for Completion of Rebanding, 7, WT Docket No. 02-55 (July 26, 2012).

<sup>5</sup> Reply at 4.

**B. The Limitations of IPSAN's Chosen Vendor Do Not Warrant a Further Extension.**

IPSAN's second justification for its requested extension concerns the limited resources of IPSAN's chosen vendor, ATC. IPSAN asserts that its inability to complete reconfiguration at the same pace originally proposed by Motorola is warranted because "ATC is not as big as Motorola," and ATC is "another, smaller vendor."<sup>6</sup> Of course, Nextel's concern when IPSAN originally announced it was changing vendors was whether the new vendor would have the resources and qualifications necessary to perform the work without delaying reconfiguration or unnecessarily increasing costs. IPSAN's claim that it was forced to change vendors because of a conflict of interest with Motorola has already been rejected by the Bureau as "lacking in detail, undocumented and uncorroborated."<sup>7</sup> The Commission itself also characterized IPSAN's conflict of interest claim as "wholly lacking in record support."<sup>8</sup>

In any event, the issue before the Bureau is not whether IPSAN was entitled to select an alternate vendor, but rather whether IPSAN, having selected an alternate vendor which IPSAN now asserts lacks the resources of Motorola, is entitled to ongoing extensions of time to accommodate the unnecessary and, Nextel submits, unreasonable, delay in completing reconfiguration. IPSAN attempts to sidestep this issue by quarreling with Nextel's citation of Motorola's original estimate that the first touch of IPSAN's subscriber units could be completed

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<sup>6</sup> *Id.*

<sup>7</sup> *Illinois Public Safety Agency Network and Nextel Communications, Inc.*, Order, 26 FCC Rcd 10668, ¶ 23 (PSHSB 2011) (*July 2011 Bureau Order*).

<sup>8</sup> *Illinois Public Safety Agency Network and Nextel Communications, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 11459, ¶ 15 (2012).

within 130 business days. IPSAN disputes that original estimate, and declares that, had Motorola's subsequent modifications been incorporated, "Motorola's estimate with the proposed contingencies and with all of the resources available to that multi-billion dollar entity, would have been close to a year."<sup>9</sup> IPSAN thus actually proves Nextel's point. Motorola, according to IPSAN, estimated completing the first touch of IPSAN's subscriber units in less than one year. As it stands, *IPSAN's first touch has been in progress for 18 months*. Now, IPSAN asks the Bureau to grant a further extension, of more than *six additional months* beyond the current April 15, 2013 deadline, meaning that the first touch will take more than two years – or *double* the length of time IPSAN claims it would have taken Motorola.

IPSAN claims that this delay is warranted, in part, because ATC is not as big as, and lacks the substantial resources of, IPSAN's original vendor, Motorola. However, the Bureau has already concluded that it "agree[s] with Sprint that, because licensees are free to choose their own vendors, they should be responsible if the chosen vendor is not qualified and competent."<sup>10</sup> The Bureau has also already concluded that IPSAN's requests for waivers of reconfiguration deadlines "will be granted if, and only if, failure to meet the deadline is due to factors beyond IPSAN's control. Vendor failure will not be deemed a factor beyond IPSAN's control."<sup>11</sup> Plainly, ATC's resource challenges do not merit a further extension of time for IPSAN to complete reconfiguration.

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<sup>9</sup> Reply at 3.

<sup>10</sup> *July 2011 Bureau Order* at ¶ 26.

<sup>11</sup> *Id.*

### **C. IPSAN's Ongoing Delay Affects Other Licensees in the Region.**

In its Opposition to IPSAN's Request, Nextel noted that "[a]t least three, and likely more, public safety jurisdictions are dependent upon IPSAN completing its long-delayed radio reprogramming so that they will complete their retunes. As a result, the entire Region is in a holding pattern waiting for IPSAN with no indication that they will be capable of meeting their stated timeline."<sup>12</sup> In response, IPSAN characterizes Nextel's claim as one of "blocking" other licensees, which is not what Nextel said.<sup>13</sup>

These are the facts. The State of Illinois will not take down its back-to-back repeaters operating old mutual aid frequencies until all of the first touches in Illinois and the adjacent regions are complete. Based on the estimated completion of other reconfiguration projects, IPSAN will be holding up the clearance of the State's channels if IPSAN's first touch stretches beyond June 30, 2013. Additionally, Elgin, Illinois plans to take down its old mutual aid frequencies only after the State of Illinois. Similarly, Lake County, Illinois plans to wait until all of the first touches in the Chicago NPSPAC Region are complete, and all of the infrastructure work in the adjacent regions is complete, before it will clear its old mutual aid frequencies. IPSAN's ongoing delay thus risks delaying the date by which at least three other licensees will clear their channels.

It is ironic that IPSAN's Reply complains that IPSAN has not heard of such an issue before, given that, in *the immediately preceding paragraph*, IPSAN "respectfully disagrees that

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<sup>12</sup> Nextel Communications, Inc., Opposition of Nextel Communications, 6, WT Docket No. 02-55 (March 20, 2013).

<sup>13</sup> Reply at 5.

Nextel can provide or would provide any beneficial assistance via participation in the Transition Administrator's monthly status conferences and, in fact, the Transition Administrator is in agreement with IPSAN on this point."<sup>14</sup> Setting aside the unsupported and undocumented representation of the Transition Administrator's views on the subject, Nextel respectfully submits that this is precisely the sort of issue where Nextel could usefully contribute information during monthly rebanding status calls between the Transition Administrator and IPSAN, and that this only underscores the potential benefit of allowing Nextel to participate in these calls and to offer whatever support or suggestions that will speed completion of the project.

## **II. CONCLUSION**

Nextel reiterates its opposition to IPSAN's request for yet another waiver of the deadline by which IPSAN must finally meet its rebanding obligations. Nextel urges the Bureau to require strict oversight of IPSAN's reconfiguration, and to put into place safeguards to ensure accountability. Specifically, Nextel again asks the Bureau: (1) to establish a firm deadline of June 30, 2013, not subject to waiver, for the completion of IPSAN's reconfiguration, beyond which point further reconfiguration costs are not subject to reimbursement; and (2) to require IPSAN to submit bimonthly status reports providing detailed information on IPSAN's progress in its reconfiguration. Without these steps, there is simply no reason to believe that IPSAN will not be back before the Bureau, requesting yet another extension, in several months' time. At this point in the process, the Bureau has ample evidence that IPSAN should not be relied upon to meet its rebanding obligations without supervision.

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<sup>14</sup> *Id.*

The undersigned attests that the statements and representations made in this Opposition are true and accurate to the best of his or her knowledge.

**NEXTEL COMMUNICATIONS, INC.**

By:           /s/ James B. Goldstein          

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of April, 2013, a true copy of the foregoing Response was served electronically upon:

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/s/ Patrick R. McFadden

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